Supreme Ct. U.S.
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In The

Supreme Court of the United States

GRACIELA AMAYA, by and on behalf of herself, and, JAIME L. AMAYA, CARLOS J.AMAYA, TOMAS V. AMAYA, RYAN A. HANLEY, minors

Petitioners – Appellants – Plaintiffs

v.

JAY J. PITNER, WORLD SAVINGS BANK, MILWAUKEE COUNTY, SUSAN WITCLIFFE, MICHAEL GUOLEE, in official and personal capacities

Respondents – Appellees – Defendants

On Writ of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1. Does a recorded lis pendens notice have the same power as a recorded deed, conveyance and / or a land patent?

2. Can a **recorded** lis pendens **notice** be used to circumvent the constitution?

3. Can a court deny the power and validity of a United States land patent?

4. Can a court contradict its ruling to state they do not have jurisdiction to review a state court judgment, yet review the respondents argument, which is based entirely on review of **a prior owners** state court judgment, not the petitioners state court judgment, then rule in respondents favor based on review of someone else's state court judgment?

5. The 7th Circuit Court of Appeals stated review of state court decisions in civil litigation is limited to the Supreme Court's certiorari power under 28 U.S.C. § 1254 and quoted *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 2005 WL 711586, No. 03-1696(U.S. 3/30/05).* If this is so, then shouldn't the judgment have been ruled in Petitioners favor and Respondents should be petitioning this court for writ of certiorari if they chose to?

6. Does Rooker and Feldman doctrine apply when there is a complete lack of any court proceedings, lawsuit and appearances by an individual?

7. Can a pro se individual be denied the right to represent her children and their claims?

8. Does immunity protect defendants if they act on void judgments, void instruments or completely lack jurisdiction?

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REQUEST THIS COURT TO TAKE JUDICIAL NOTICE OF THE FOLLOWING:

Comes now Petitioner, Graciela Amaya, untrained in the law, unfamiliar with the local rules, without appropriate assistance, without effective consul requests to have this and any future pleadings be "liberally construed" according to the "Kerner Doctrine", *Haines v. Kerner, 404 US 519. Must be liberally construed, especially where civil rights claims are involved. Huffman v. Fiola, 850 F.Supp. 833, 836 (N.D. Cal. 1994) cite Hugher v. Rowe, 101 S.Ct. 173, 175-176 (1980). Must be liberally construed. Moore v. McDonald, 30 F.3d 616, 620 (5th Cir. 1994)*

JURISDICTIONAL STATEMENT

This court has jurisdiction under 28 U.S.C. § 1257 and / or § 1251. The 7th Cir. stated in its opinion affirming the District Cts. decision that this case is limited to the Supreme Court's certiorari power under 28 U.S.C. § 1254.(order, APPENDIX 1)

STATEMENT OF THE CASE

Petitioner Amaya filed the original action in the Eastern Dist. Ct. of Southeastern WI around Nov. 19, 2003 and the amended complaint on Nov. 25, 2003. The case was ordered dismissed by the Dist. Ct. at the hearing held on June 6, 2004. The 7th Cir. Ct. affirmed the Dist. Ct's. decision on April 4th, 2005. Petitioner Amaya filed a petition for rehearing en banc which was denied on July 8, 2005 by the 7th Cir. Cts. original panel.

STATEMENT OF FACTS

1. On June 19, 2003 Petitioner, Amaya, recorded her quit claim deed. (EXHIBIT 4)
2. On October 10, 2003, Respondents recorded their sheriff deed. (EXHIBIT 3)
3. Respondents sheriff sale and recording of the sheriff

deed has no force because it was recorded after my quit claim deed and without due process for Amaya. The deeds are prima facie evidence by the dates and the names which clearly shows my quit claim deed was recorded before their sheriff deed.

4. On November 14, 2003, Petitioners Amaya and family were evicted from their property.

5. On November 25, 2003, Amaya filed her amended complaint in United States District Court which stated plaintiffs were deprived / denied their property without due process of law, the takings clause, unreasonable seizures, and equal protection of the laws. In addition, she requested her pleadings be liberally construed.

6. Petitioner Amaya has a Land Patent on her property dated 1843. The Land Patent is the highest evidence of title. (EXHIBIT 5)

7. At June 2, 2004 hearing, the District Court **reviewed Bartkowiak's case** by allowing defendants pleadings to be **entered**. In pleadings, in my motions to strike and responses to defendants motions, I stated I didn't know all the details of Bartkkowiak's case, nor was it appropriate to use my complaint for a lawsuit that should have been filed by the defendants before taking my property.

8. The argument that federal courts do not have authority to review state cases has no merit in regards to this case because the facts of Bartkowiak's case were reviewed. The facts in Bartkowiak's case did not need to be reviewed to provide relief to Petitioner Amaya. The names and dates of the deeds, the land patent, the writ (EXHIBIT 1) and the 24 hour eviction notice (EXHIBIT 6) are prima facie evidence of the lack of due process and equal protection.

ARGUMENT & MEMORANDUM OF LAW IN SUPPORT OF ARGUMENT:

I. Petitioner, Amaya, recorded her interest in her property on June 19, 2003 before Appellees sheriff sale and recording of their sheriff deed filed on October 10, 2003. Once Amaya's deed was recorded, it became legally enforceable property, as detailed under Wis. Stat. 706.08.

Respondents argument fails due to Amaya's constitutional rights, jurisdictional requirements and immunities / privileges obtained on Amaya's Land Patent.

A. <u>A court must have jurisdiction in order to create valid judgments</u>

1. Parties agree that there was never a lawsuit filed against Amaya nor was Amaya involved in the proceedings that was adjudicated years before Appellant – Plaintiff Amaya filed her deed. The Respondents **<u>failed</u>** to acquire jurisdiction over Amaya. *Jurisdiction over the person is acquired* ***by actual service of processor personal appearance of the defendant which is a simple question of fact****. (See "conflict of law" in the law dictionaries) Once jurisdiction is challenged, it must be proven. <u>Hagens v. Lavine</u>, 415 U.S. 533, note 3.*

2. There are three essentials to obtain jurisdiction to adjudicate. They are as stated by the Supreme Court of the United States: the court must have cognizance of the class of cases to which the one to be adjudicated belongs; second, the **<u>proper parties must be present</u>**; and third, the point decided upon must be in substance and effect within the issue. Petitioner Amaya, was the proper person for jurisdiction, due to the filing of her deed and as the current owner of the property. *Jurisdiction is "The right to adjudicate concerning the subject-matter in the given case. To constitute this there are three essentials: First, the* ***<u>court must have cognizance of the class of cases</u>*** *to which the one to be adjudicated belongs; second, the* ***<u>proper parties must be present</u>****; and third, the point decided upon must be in substance and effect within the issue." <u>Reynolds v. Stockton</u>, 140 U.S. 254, 268.*

3. These jurisdictional requirements were not met before the seizure of my home. Therefore; the judgment, the sheriff deed, the writ were of no standing. As the Supreme Court of the United States stated void judgments and/or void deeds are of no standing in any court. *Wisconsin's courts had no jurisdiction to make such a decree binding upon appellant. <u>Baker v. Baker, Eccles & Co.</u>, 242 U.S. 394, 401; <u>Esenwein v.</u>*

Commonwealth, 325 U.S. 279, 281

B. Due Process & Equal Protection Constitutional Guarantees

1. A deed for property is not considered property until it is recorded / filed with Register of Deeds. **Once a deed is recorded it has validity and force and is guaranteed and protected by the due process clause of the** United States Constitution and the Wisconsin Constitution. This is well known in all states and counties under the recording laws of each state. Respondents sheriff sale and recording of the sheriff deed has no force **because it was recorded after my quit claim deed and without due process for Amaya.** Under the Wisconsin Statutes 706.08 Respondents sheriff deed is void because it was recorded after my quit claim deed on the same real estate. ***Nonrecording effect.*** *(1)(a) Except for patents issued by the United States or this state, or by the proper officers of either, every conveyance* ***that is not recorded*** *as provided by law* ***shall be void*** *as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real estate or any portion of* ***the same real estate whose conveyance is recorded first****. 706.08 Wis. Stat.*

2. As stated by the United States Supreme Court, property rights are defined from an independent source such as state law. A lis pendens is a notice. It is not a title / deed / conveyance. Any transfer of title / conveyance / deed under state law, Wis. Stat. 706.08, is void if not recorded before another conveyance against the same property. *"they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law....." Board of Regents v. Roth, 408 U.S., at 577. See also Paul v. Davis, 424 U.S. 693, 709 (1976)*

3. The law was not followed under Wis. Stat. 708.06 regarding deeds, titles, conveyances and land patents. The courts are to enforce the law according to statute. *The sole function of the court is to enforce the law according to statute. Carey v. Piphus, 435 U.S. 247, 266 (1978)*

4. The District Court opinion and Court of Appeals

opinion cited *J.& S. Corp. v. Mortgage Assoc's., Inc. 164 N.W.2d 221, (Wis. 1969)* which cites *Munger v. Beard, (1907), 79 Neb. 764, 113 N.W. 214*, because the case involves a lis pendens statute similar to Wisconsin's, and the opinion is helpful in understanding the purpose and proper meaning of such a statute. This case also states that a deed has validity and force only when it is recorded and it confirms that a person is only part of the case/record if evidenced by the record and only if evidenced by the record. *...it is the privilege of the legislature to say* ***that no deed or instrument affecting real estate shall be of any validity or force whatever until it is recorded****, and, when possessed of this power...Munger v. Beard (1907), 79 Neb. 764, 113 N.W. 214*

5. The intent of the legislature **was not to avoid** establishing personal jurisdiction/notice/opportunity to defend for those who recorded their interest in property. The intent of the legislature, via a lis pendens, was also to warn prospective purchasers of "buying a lawsuit". *840.10 has additional objective of giving prospective purchasers and encumbrancers notice of pending actions so they may avoid "buying a lawsuit". ¶ 34 citing Belleville State Bank v. Steele, 117 Wis. 2d 563, 571, 345 N.W.2d 405 (1984).*

6. The state cannot authorize the courts to mean it any other way or it would violate the protections guaranteed by the United States Constitution, established law and decisions of this court, and Wisconsin **Nonrecording effect**, supra. The state of Wisconsin cannot vest state courts with the power to violate the Constitution, this courts established law on due process, equal protection, jurisdiction, and the power of the federal land patent. *The states cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land. Kalb v. Feuerstein, 60 S.Ct. 343, 308 U.S. 433, 84 L.Ed. 370 (1940).*

7. The Supreme Court of the United States has stated the right to due process is guaranteed by the Constitution. I have constitutional rights to due process and equal protection of the laws of this country. *"Property" cannot be defined by the procedures provided for its deprivation any more than can life or liberty.* ***The right to due process "is conferred, not by***

legislative grace, but by constitutional guarantee. *Arnett v. Kennedy, 416 U.S. 134 (1974) at 167*

8. Respondents – Defendants state that "Amaya had constructive notice and did nothing to intervene in Bartkowiak's suit and admits she did not have the ability to pay the judgment." I admitted I was aware, long after the judgment was rendered against Jeffery Bartkowiak, which is why it was recorded so late. (EXHIBIT 2, Second and third full paragraphs, page 22).

9. Respondents – Defendants cannot assume someone will not be able to pay the judgment and/or have a defense and therefore avoid providing an individual with due process and equal protection under the United States Constitution. The right to due process does not depend on a demonstration of certain success. *.....and the right to a hearing does not depend on a demonstration of certain success. Carey v. Piphus, 435 U.S. 247, 266 (1978)*

10. Respondents argument is repugnant to our country. Their interpretation would violate the Supreme law of the land. The United States Supreme Court has stated that frequently words of general meaning are used in a statute, words broad enough to include an act in question but make it unbelievable that the legislature intended to include the particular act. *"frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of....makes it unreasonable to believe that the legislator intended to include the particular act." Church of Holy Trinity v. United States, 143 U.S. 457, 459. These words guided our construction of the statute at issue in Public Citizen v. Department of Justice, 491 U.S. 440, 454 (1989)*

11. The law on due process requirements is well established. The United States Supreme Court has stated that essential elements of due process of law are adequate procedures appropriate to the nature of the case. This is not to be interpreted to avoid other United States Supreme Court law and laws on obtaining personal jurisdiction for courts to act as detailed in U.S. Supreme court cases cited earlier. *.....an essential principal of due process is that a deprivation of life, liberty, or property "be preceded by* ***notice and opportunity***

for hearing appropriate to the nature of the case. *Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950)*

Memorandum of Law on Due Process

Due process requires reasonable notice and a ***fair opportunity to be heard***. *See Cleveland Bd. Of Educ. V. Loudermill, 470 U.S. 532, 541. 84 L. Ed. 2d 494, 105 S. Ct. 1487 (1985) The essential elements of due process of law are notice and opportunity to defend; Simon v. Craft, 182, U.S. 427. As the Supreme Court stated in Palko v. Connecticut, 302 U.S. 319, 325, 82 L. Ed. 288, 58 S. Ct. 149 (1937), the Due Process Clause imposes requirements of decency and fairness because they are "implicit in the concept of ordered liberty". In Rochin v. California, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952)* ***Property rights are paramount.*** *Not only does the US Constitution protect property rights, but the laws of the federal government does also." Stella Hughes v. State of Washington, 389 U.S. 290 (1967). "Property does not have rights.* ***People have rights. The right to enjoy property without unlawful deprivation,*** *no less than the right to speak or the right to travel, is in truth a "person" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and personal property right. Neither could have meaning without the other. The rights in property are the basic civil rights has long been recognized. Congress recognized these rights in 1871 when it enacted the predecessor of 42 U.S.C. 1983 and 1343(3). We do no more than reaffirm the judgment of congress today.* ***Due process means fundamental fairness.*** *Hampton v. United States, 96 S. Ct. 1646, 1652 note 6 (1976). The United States Supreme Court .... "where a particular amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." County of Sacramento v. Lewis, 523 U.S. 833, 118 S. Ct. 1708, 1714 (1998)(citations omitted). Eternalist Foundation, Inc. v. City of Platteville, 225*

*Wis.2d 759, 593 N.W.2d 84, 1999. ¶47 In a procedural due process claim, it is not the deprivation of property of liberty that is unconstitutional; it is the deprivation without due process of law. Arneson v. Jezwinski, 225 Wis. 2d 371, 592 N.W.2d 606 (1999). If a clearer holding is needed, we provide it today. The point is straightforward: the Due Process Clause provides that certain substantive rights -- life, liberty, and property -- **cannot be deprived except pursuant to constitutionally adequate procedures**. The categories of substance and procedure are distinct. ... The right to due process "is conferred, not by legislative grace, but by constitutional guarantee. While the legislature .....may not constitutionally authorize the deprivation of ....an interest,.... without appropriate procedural safeguards." Arnett v. Kennedy, 416 U.S. 134 (1974) at 167 An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest."[fn7] Boddie v. Connecticut, 401 U.S. 371, 379 (1971) (emphasis in original); see Bell v. Burson, 402 U.S. 535, 542 (1971). This principle requires "some kind of a hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment. Board of Regents v. Roth, 408 U.S., at 569-570; Perry v. Sindermann, 408 U.S. 593, 599 (1972). As we pointed out last Term, this rule has been settled for some time now. Davis v. Scherer, 468 U.S. 183, 192, n. 10 (1984);....and the right to a hearing does not depend on a demonstration of certain success. Carey v. Piphus, 435 U.S. 247, 266 (1978)*

C. Land Patent -highest form of title (Memorandum of Law on Land Patent – APPENDIX 1)

1. This Court must reverse Court of Appeals decision and immediately restore Petitioner Amaya, to possession

of her property and bring an end to Petitioners irreparable injury. *The power of Congress to dispose of its land cannot be interfered with, or its exercise embarrassed by state legislation, nor can such legislation* ***deprive the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of title after the initiation of proceedings for the acquisition.*** *State statutes that give lesser authoritative ownership of title than a patent cannot be brought into federal court. Langdon v. Sherwood, 124 U.S. 74 80; Gibson v. Chateau, 80 U.S. 92.*

2. The land patent is the foundation of title at law and immediate possession without further delay and reversal of District Courts decision is the only remedy without further violating Appellants rights and equal protections. *" A Patent for land is the highest evidence of Title, and is conclusive evidence against the Government and all claiming junior patents or titles. U.S. v. Stone, 167 U.S. 178. In Federal Courts, the patent is held to be the foundation of title at law. The plaintiff in ejectment must in all cases prove the legal title to the premises in himself title will be sufficient for recovery. The practice of allowing ejectments to be maintained in state courts upon equitable titles cannot effect the jurisdiction of the courts of the United States. Fenn v. Holme, 21 HOWARD 48.*

3. All judges and states are bound by the power and the validity of the land patent. *All judges in all States shall be bound as to the power and validity of the patents. U.S. v. Debell, 227 F 760 (1915) ...neither town nor its officers have any right to appropriate or interfere with private property. Mitchell v. City of Rockland, 45 ME 496*

II. Respondents, the District Court, and the Court of Appeals stated that Appellants – Plaintiffs, relief requested cannot be granted without reviewing the state court case which is barred by the Rooker-Feldman doctrine.

A. The 7th Circ. Ct. affirmed allowing Bartkowiak's state court case to be reviewed which was the basis of Respondents argument; contradicting its own opinion. In addition, this doctrine is inapplicable due to the lack

of personal jurisdiction and case for Petitioner Amaya

1. Respondents entire argument is based on facts from review of Jeffery Bartkowiak's state court case that Petitioner Amaya never appeared in. The District Court did review Bartkowiaks, the prior owners, state case; yet the Rooker Feldman and Younger Abstention doctrine is inapplicable due to the lack of any court proceedings, lack of personal jurisdiction, over Petitioner Amaya. It makes no sense, using this reasoning, any case of another individual could be used to justify constitutional violations.

2. Petitioner Amaya raised the issue of bad faith. *Moore v. Sims, 99 S.Ct. 2377, 2378 (1979)* The "Younger abstention doctrine," prohibits a federal court from interfering in a state court proceeding unless the state court proceeding is conducted in bad faith. Absolute lack of personal jurisdiction, complete absence of any court proceedings, prima facie evidence of denial of due process and equal protection constitutional rights, is bad faith. Allowing review of Bartkowiaks case, as both the District Court and 7th Circuit Court of Appeals did, which clearly should not have been, as already detailed, should have easily added clarity that Petitioner Amaya's constitutional rights were violated. *See Younger v. Harris, 91 S.Ct. 746, 752 (1971).*

3. The Seventh Circuit Court of Appeals reviewed the state court case in Soldal v. Cook County, yet states it does not have jurisdiction to rule in Petitioners favor despite the fact that Bartkowiak's state court case has been reviewed by the courts defending Respondents argument that a lis pendens notice is considered property just as a conveyance and giving this notice the same power as a title / deed / conveyance. The 7th Circuit Court of Appeals ruled in that case that the eviction of a defendant before the first hearing was more of a taking/due process violation rather than an illegal search and seizure violation and ruled against Soldal, the plaintiff, and in favor of the defendants, Cook County. This court reversed agreeing with Petitioner Soldal that it was also an unreasonable search and seizure. *Soldal v. Cook County, 113 S. Ct. 538, 121 L. Ed. 2d 450, 61 U.S.L.W. 4019 (1992)*

4. The Court of Appeals applied its decisions unequally to Petitioner in this case. The Respondents, believe that if they continue to say it is their property and what they have done is legal, it will make it so. *Painting black lines on the side of a horse and calling it a zebra* ***does not make it one***. *United States v. Vazquez-Rivera, 135 F.3d 172, 177 (1st Cir. 1998)*

5. Respondents wish their argument was true but this court must rule on the basis of what the law is rather than what a party wishes it to be. *[W]e rule on the basis of what the law is rather than what a party wishes it could be. In re Barshak, 106 F.3d 501, 506(3rd Cir. 1997)*

B. The Court of Appeals stated District Court could not give Appellant – Plaintiff Amaya relief she is seeking without in effect reviewing and disregarding the state court's judgment. Relief could have been given without District Court reviewing Bartkowiak's case by the sheer evidence of the exhibits and lack of any jurisdiction / proceedings over Appellant - Plaintiff Amaya.

1. As already stated the District Court and Court of Appeals has in essence reviewed Bartkowiaks state court case, contradicting its own decision yet ruling in Respondents favor. The review of Bartkowiak's case make it clear that the judgments are void and have no standing. *If Wisconsin has rendered a valid judgment, the Constitution not only requires every state to give it full faith and credit, but 28 U.S.C. sec. 1738, referring to such judicial proceedings, commands that they "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." ..... The only escape from obedience lies in a holding that the judgment rendered in Wisconsin, ..., is void and entitled to no standing even in Wisconsin. It is void only if it denies due process of law..... Wisconsin's courts had no jurisdiction to make such a decree binding upon appellant. Baker v. Baker, Eccles & Co., 242 U.S. 394, 401; Esenwein v. Commonwealth, 325 U.S. 279, 281*

4. The District Court or the Court of Appeals did not

have to review the facts in the state case to see the absence of due process. The names and the dates of the recordings of the sheriff deed and the quit claim deed, are prima facie evidence of the denial of due process and equal protection, as detailed in Wisconsin statute 706.08, **Nonrecording effect**, supra.

5. The courts are enforcing a void judgment and void sheriff deed that has no power or authority over Amaya's quit claim deed and land patent.

6. This court is putting a lis pendens, a notice of pending lawsuit, above a recorded quit claim deed and the power and validity of a land patent, the foundation of title in property law.

7. The District Court and Court of Appeals decisions / orders go against the very core of our constitution, country, and society. Innocent until proven guilty. This court's view is adopting the presumption that everyone is guilty and there is no due process. That through a recording of a lis pendens, you can gain another's property, before the owner even gets a chance to defend his/her property. No matter how you look at this case, it is clear to see that Amaya's rights were violated. The sheriff deed, writ, and 24 hour eviction notice are void. They are fraudulent. They are completely unenforceable.

8. Respondents, the District Court, and the Court of Appeals refuse to see the truth and obey the law. The United States Supreme Court, at *Mitchum v. Foster, 92 S. Ct. 2151 (1972)*, made an observation that is directly applicable to Petitioner Amaya's situation and stated as follows: *"If the State courts had proven themselves competent ....to maintain law and order, we should not have been called upon to legislate...We are driven by existing facts to provide for the several states in the South what they themselves have been unable to fully provide for themselves; i.e., the full and complete administration of justice in the courts....Sheriffs having eyes to see, see not; judges having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices.. (A)ll the government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice." Mitchum, supra at 2161*

Memorandum of Law on Void Judgments

Void judgment is one ***entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order*** *involved and such a judgment may be attacked at any time, either directly or collaterally. People v. Wade, 506 N.W.2d 954,(1987). A void judgment is one rendered* ***in absence of jurisdiction over subject matter or parties****. Lange v. Johnson, 204 N.W.2d 205 (1973). A void judgment is one where ....1) subject matter jurisdictional failings...* ***violation of due process,*** *Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 (1938)). Jurisdiction depends not whether the relief asked for is available, but on* ***whether the court has the power to hear the kind of action brought****. Murphy v. Miller Brewing Co., 50 Wis. 2d 323, 184 N.W.2d 141. Wisconsin's courts had no jurisdiction to make such a 279, 281*

III. Immunity does not protect defendants if they act on void judgments, void instruments or completely lack jurisdiction

1. The defendants were notified on several occasions as admitted that the facts were not in dispute detailed in District Courts order(APPENDIX 1). On notice and fully informed acted in clear absence of jurisdiction. *Civil rights, municipal liability – must show defendants were on notice of pattern of constitutional violations, failure to train tantamount to deliberate or conscious decision to allow violations. Hirsch v. Burke, 40 F.3d 900, 904 (7th Cir. 1994). Municipalities and their agencies can be held liable for civil rights violations by its employees under § 1983 when the violations result from "a government's policy or custom." Monell v. New York City Dept. of Soc. Serv., 436 U.S. 658, 694 (1978); Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994).*

2. Since the defendant/s all acted without jurisdiction, under color of law and violated and clearly denied plaintiff/s of clearly established rights, the defendant/s are liable and is prima facie evidence of conspiracy. *A conspiracy is* ***actionable under 42 USC 1985, when there has been an***

"actual denial of due process." *(Civil Rights) Jennings v. Nester (1954, Ca. 7 Ill.) 217, F.2d 153, CERT DEN 349 U.S. 958, 99 L.Ed. 1281, 75 S.Ct. 888.*

3. The Eleventh Amendment immunity does not protect from lack of jurisdiction and violation of equal protection. "*Under Ex Parte Young and its progeny, a suit seeking prospective equitable relief against a state official who has engaged in a continuing violation of federal law is not deemed to be a suit against the State for purposes of state sovereign immunity; Ex Parte Young, 209 U.S. at 159-160, 28 S.Ct. 441; Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 n. 10, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989)(stating that "official-capacity actions for prospective relief are not treated as actions against the State."). Since the State cannot authorize its officers to violate federal law, such officers are "stripped of [their] official or representative character and [are] subjected in [their] person to the consequences of [their] individual conduct." Ex Parte Young, 209 U.S. at 160, 28 S.Ct. 441...Ex Parte Young gives life to the Supremacy Clause, as remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law."*

4. There was no action involving private property owner, Graciela Amaya. They skipped that process, depriving plaintiff/s of a clearly established constitutional right of which any reasonable person would have known. *Liability may be premised upon a failure to act. United States v. City of Yonkers, 96 F.3d 600, 613(2nd Cir. 1996)(Leonard Sand).*

5. They have violated a clearly established constitutional right of which a reasonable person would have known. *Employee....is entitled to qualified immunity....if employee's conduct "**does not violate clearly established** statutory or constitution rights of which a reasonable person would have known." See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).*

6. Defendant/s acted in 'clear absence of all jurisdiction' and therefore would not qualify for any immunity. *Judges are absolutely immune for their judicial acts from civil suits for damages. See Stump v. Sparkman, 435 U.S. 349, 355-56 (1978). Judicial immunity is premised upon the "general*

principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself." See id., 435 U.S. at 355, quoting Bradley v. Fisher, 13 Wall 335, 347, 80 U.S. 335, 20 L. Ed. 646 (1871). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather ***he will be subject to liability only when he acted*** *in the* ***'clear absence of all jurisdiction.'"*** *See id. At 356 – 57, quoting Bradley, 13 Wall at 351.*

7. State law immunities such as quasi-judicial immunity do not supercede federal law, 42 USC § 1983. *State law immunities don't override 42 U.S.C. § 1983 deprivation of federal rights. Jane Monell v. D.S.S. City of New York, 436 U.S. 658, 98 S.Ct. 2018 (1978). 42 U.S.C. § 1983 "...'on its face does not provide for any immunities. (judicial immunities included)" Heck v. Humphrey, 114 S. Ct. 2364, 2375-2376 n. 1 (1994) 42 U.S.C. sec. 1983 trumps state law. Kimes v. Stone, 84 F.3d 1121, 1127 (9th Cir.)(1996) Qualified immunity does not protect the plainly incompetent in § 1983 action. Reasonable police officers would not have been deaf and blind before two women insisting they were wrong. Henderson v. Mohave County, 54 F.3d 592 (9th Cir. 1995).*

IV. Petitioner may represent her children's interests in this action.

1. Under F.R.C.P. 17 (c) a minor must be represented by a competent adult, ordinarily a parent or relative. *...minor child must be represented by a competent adult, ordinarily a parent or relative. T.W. by Enk v. Brophy, 124 F.3d 893, 895 (7th Cir. 1997); F.R.C.P. 17(c)*

2. A parent has a constitutionally protected right to advocate for her children. These are claims which are decisions that a parent makes every day. The federal rules all make statements throughout for individuals, pro se, who represent their children. Why is this decision different than

any other decision. I did not request appointed counsel, I decided to represent both my children and I. Respondents argument applies for those who wish and request counsel and /or do not know that they are entitled to legal representation on certain claims/issues/situations. Respondents argument is not applicable in this instant action. I am their parent and am entitled to represent their interests as stated under F.R.C.P. 17 (c). *A parent has constitutionally protected rights to the care, custody, and* ***management of a child***. *In Interest of J.L.W., 102 Wis. 2d 118, 306 N.W.2d 46 (1981).*

3. Memorandum of Law on Parental Liberty Rights (APPENDIX 2)

REASONS TO SUPPORT WRIT OF CERTIOARI:

1. The panel's decision conflicts with many decisions of the United States Supreme Court including Kalb v. Feurerstein, U.S. v. Stone, Reynolds v. Stockton, Stella Hughes v. State of Washington, Langdon v. Sherwood, Gibson v. Chateau, Cleveland Bd. Of Educ. v. Loudermill, Simon v. Craft, and other United States Supreme Court cases, other United States Court of Appeals cases, state supreme court cases and other Seventh Circuit Court of Appeals decisions listed in this petition.

2. The facts and law in this case is simple to see is unlawful. The Seventh Circuit Court of Appeals cannot over-rule the United States Supreme Court. Almost this whole petition is quoting the United States Supreme Court. The Dist. Ct. and the 7th Cir. Ct. are ignoring the law and over-ruling this court and therefore conflicting with other courts which seem to respect the Constitution and this court, the highest court. *...well settled that a Court of Appeals cannot over-rule the United States Supreme Court. Kitowski v. United States, 931 F.2d 1526, 1529(11th Cir. 1991).*

3. No court has the right to violate the supreme law of the land. *...the courts, possess no power not derived from the Constitution. Ex parte Quirin, 63 S.Ct. 2, 10 (1942).*

4. Courts do not have any power not derived from the Constitution established by the people, in which officials, are

obligated to obey. *[T]he Constitution [is] the supreme law established by the people.* Muskrat v. United States, *31 S.Ct. 250, 254 (1911).*

5. The actions are clearly and completely unconstitutional, violating the supreme law of the land. If this court does not grant certiorari and correct the orders for whatever reason, it is giving courts the power to violate the supreme law of the land. *....cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land.* Kalb v. Feurerstein, *60 S.Ct. 343, 308 U.S. 433, 84 L.Ed. 370 (1940).*

6. The Supreme Court of the United States has stated the right to due process is guaranteed by the Constitution. Unless this court grants certiorari, this court will send the message that our laws do not mean anything. Therefore, this court must correct the guarantees Petitioner Amaya has under the constitution. ***The right to due process "is conferred, not by legislative grace, but by constitutional guarantee.*** *Arnett v. Kennedy, 416 U.S. 134 (1974) at 167*

7. The judgments are void and must be vacated. *When rule providing for relief from void judgments is applicable, relief is not discretionary matter,* ***but is mandatory****.* Orner v. Shalala *30 F.3d 1307(1994). See* Green v. United States, *355 U.S. 184, 187-88(1957). ...supervisory writ if he can show that there was in fact a defect in subject matter or personal jurisdiction.* State v. Webb, *160 Wis.2d 622, 632, 467 N.W.2d 108, 112, cert. denied, 112 S.Ct. 249 (1991) defects in subject matter jurisdiction cannot be waived and do survive the judgment of conviction. See e.g.,* Chicago & N.W.R. Co. v. La Follette, *27 Wis.2d 505, 512, 135 N.W.2d 269(1965). Also...legitimate challenges to the personal jurisdiction of the circuit court,.....".* State ex rel. Zdanczewicz v. Snyder, *131 Wis. 2d 147, 151, 388 N.W.2d 612 (1986). Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally.* People v. Wade, *506 N.W.2d 954,(198[illegible] A void judgment is one rendered in absence of jurisdiction over subject matter or parties.* Lange v.

Johnson, 204 N.W.2d 205 (1973). A void judgment is one where ....1) subject matter jurisdictional failings...violation of due process, Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 (1938)

8. The highest court of Wisconsin must grant petition for jurisdiction because **it raises issues that create new and important problems**. The shocking number and boldness of the lawless acts by the state of Wisconsin of clearly established law, must be addressed to sustain public confidence. What message will the highest court of this state send if it does not accept certiorari? As this court stated before, *"crime is contagious". If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face." Olmstead v. United States, 277 U.S. 433, 485 48 S.Ct. 575 (1928). Mitchum v. Foster, 92 S.Ct. 2151, 2161 (1972)*

9. Homelessness is a serious tragedy and problem. With the recent natural disasters adding to this problem in our country, the importance of this case is imperative. This court must send a loud message that there will be no tolerance for individuals creating such serious nightmares through unlawful behavior.

WHEREFORE, for all these facts / reasons / argument and memorandum of law in support of petition in regards to this case, petitioner requests the Supreme Court of the United States to grant certiorari and mandate as follows:

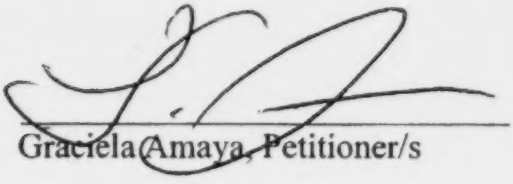
RELIEF REQUESTED

Petitioner requests mandate for reversal of District Courts and / or 7th Circuit Court of Appeals decision as stated in this petition and for relief requested in amended complaint filed in District Court as well as appropriate and effective action to

restore Petitioners to their home / property / land immediately.

Date 2-3-06

Sincerely,



Graciela Amaya, Petitioner/s

Petitioner Amaya, believes oral argument is unnecessary and requests opinion to be published.

APPENDIX I

Memorandum of Law on Civil Rights and the Federal Land Patent

7TH Cir. Ct. order denying rehearing 7-8-05

7TH Cir. Ct. order affirming Dist. Ct. decision 4-4-05

U.S.D.C. order from 6-2-04 hearing dismissing case

APPENDIX II **separate cover**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

GRACIELA AMAYA, by and on behalf of Herself and, JAIME L. AMAYA, CARLOS J. AMAYA, TOMAS V. AMAYA, RYAN A. HANLEY, minors,

Plaintiffs,

v. Case No.: 03-C-1277

JAY J. PITNER, GRAY & END, LLC, MICHAEL GUOLEE, WORLD SAVINGS BANK, MILWAUKEE COUNTY, SUSAN WITCLIFFE, MILWAUKEE SHERIFFS DEPARTMENT, UNKNOWN GRAY & END EMPLOYEES, UNKOWN DETECTIVES OF SHERIFF'S DEPT., UNKNOWN WORLD SAVINGS BANK EMPLOYEES,

Defendants.

DECISION AND ORDER DISMISSING CLAIMS OF PLAINTIFF MINOR CHILDREN WITHOUT PREJUDICE, GRANTING DEFENDANT MICHAEL GUOLEE'S MOTIONTO DISMISS, GRANTING JAY J. PITNER, GRAY & END LLC, WORLD SAVINGS BANK EMPLOYEES' MOTION TO DISMISS, DENYING PLAINTIFFS' MOTIONS TO STRIKE DEFENDANTS' MOTION TO DISMISS (DOCS. ##23, 35), GRANTING MILWAUKEE COUNTY, SUSAN WITCLIFFE, MILWAUKEE SHERIFF'S DEPARTMENT AND UNKNOWN DETECTIVES OF SHERIFF'S DEPARTMENT'S MOTION TO DISMISS, AND DENYING AS MOOT PLAINTIFF'S MOTION FOR RELIEF (DOC. #39)

On November 25, 2003, Graciela Amaya, by and on behalf of herself and her minor children, Jaime L. Amaya, Carlos J. Amaya, Tomas V. Amaya, and Ryan A. Hanley, filed an amended complaint alleging claims pursuant to 42 U.S.C. §§ 1983, 1985(3) and 1986, and a request for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, as well as 28 U.S.C. § 1651. In addition, the complaint asserts claims for fraud, civil conspiracy, fraudulent misrepresentation, fraud in the factum, fraudulent concealment and execution, mail fraud negligence, intentional infliction of mental distress, negligent infliction of mental distress and trespass.

In pertinent part, the complaint states as follows:

> 27. Plaintiff receives letter in mail addressed to occupant from sheriff's department approximately two to three weeks ago, it states twenty-four hour eviction notice.
>
> 25. A couple days later, detective, Susan Witcliffe, came to plaintiff's home. Plaintiff asked them to wait and returned to the side door screen porch entrance with a recorder.
>
> 26. Plaintiff calls and gets a recording at the sheriff's department and leaves message. No one ever returned plaintiff/s phone message.
>
> 27. At approximately 10-11 AM on Friday, November 14, 2003, plaintiff/s main front door was destroyed with a crow bar (or something to that affect that broke it) and defendant's detective (Nielson ?) from the sheriff's department stormed into home along with many others.
>
> 28. Detective (Nielson ?) yelled "Sheriff's Department", plaintiff came to front entrance and asked them what they were doing?
>
> 29. Detective (Nielson ?) stated "we are evicting you." Plaintiff requested to see the writ and requested copies of the writ. Another man said he would make them for me and would not allow me to touch them.
>
> 30. I explained to Detective (Nielson ?) that this was illegal and Jeffery Bartkowiak is not the owner. I told him he needed to investigate this. He stated "I am

not supposed to investigate anything, just follow the writ orders".

31. Desperate, plaintiff, Graciela Amaya, started calling news stations pleading for help, that her belongings were being taken from her, Nazi style, without due process of law, here in Milwaukee.

32. Plaintiff was able to call only two stations when Detective (Nielson ?) directs one of the movers to pack up my phones.

33. Once a news station reporter arrived and spoke to plaintiff while camera man was recording the seizure of my personal property, he began stating many facts that he supposedly didn't know earlier when I told him this was a mistake and illegal, he was trying to convince the reporter and camera man that this was a legal activity.

34. Detective (Nielson ?) later stated I was being very difficult. I told him "you have had plenty of time to investigate, I told detective Witcliffe the same thing, if you go through with an eviction, you will be depriving me of due process and equal protection of the laws, you don't care but the records at the register of deeds is obvious, it takes a couple minutes to make a call."

35. Plaintiff, Graciela Amaya, left to go to the courthouse to check records and make copies at the register of deeds. Some clerks helped plaintiff as she explained the nightmare that was occurring at her home as they spoke. They stated, "those attorneys had plenty of time to know the property was yours, you should file criminal charges with district attorney, that is just plain wrong, I hope those news stations let people know, they may do it to others."

36. When plaintiff went home to meet her boys coming back home from being dropped off from school, the outside of plaintiff's home was littered with garbage and pieces of plaintiff's clothing. The door was broke due to forced entry. Inside of home was also trashed, spilled soda from empty soda cans and McDonalds food litter in various areas. Most everything was gone. Some

large items such as the 48" large screen television, the 40" fish aquarium, the "real" 5' tree, and master bedroom bathroom items were still there along with some missed closets and cabinets. All plaintiff's food was left in boxes outside of home and broken, leaving a mess.

37. Plaintiff's began cleaning up and a World Bank representative arrived in a van and stated he needed to do an inspection. He went back to his van and made some calls. Shortly thereafter, River Hills police officer arrived.

38. Plaintiff, Graciela Amaya, was almost arrested but she agreed to leave and the police let her go. The sergeant stated "if you come back, I will have to arrest you."

39. Plaintiff's left their home and spent the night in a hotel.

40. The plaintiffs are Mexican Americans.

The complaint identifies the defendants in their official and unofficial capacities, as Jay J. Pitner, an attorney, Gray & End, LLP, agent for World Savings Bank, another defendant, Susan Witcliffe, a detective, the Milwaukee Sheriff's Department, Michael Guolee, Milwaukee County, Unknown Gray & End attorneys, unknown World Savings Bank employees, and unknown Milwaukee County Sheriff's Department detectives.

Defendant Guolee filed a motion to dismiss on December 8, 2003, along with a supporting brief asserting that he is shielded from liability on the grounds of judicial immunity, Eleventh Amendment immunity, qualified immunity, the Rooker-Feldman doctrine and failure to state a claim on which relief may be granted. Pitner, Gray & End, World Savings Bank, the Unknown Gray & End Employees, and the Unknown World Savings Bank Employees filed Rule 12(b(4) and 12(b)(6) motions to dismiss on December 10, 2003. These motions, which are accompanied by a supporting brief and the affidavit of Christopher M. Avery, one of the movants' attorneys, cite Civil Local Rules 7.1 and 56.1 and set forth Fed. R. Civ. P. 56. A Certificate of Service was filed on the same date showing that the plaintiffs were duly served with the aforementioned documents.

Amaya filed a notice of Motion and Motion on January 5, 2004, asking the court to strike the defendants' motions. All pending motions were considered on Wednesday, June 2, 2004. Amaya appeared at the hearing pro se and presented arguments and factual assertions in opposition to the defendants' motions.

This case arises out of a mortgage foreclosure and eviction. Amaya and her minor children resided at 9333 Upper River Rd., River Hills, Wisconsin, 53217. Amaya believes she is the rightful owner of that property pursuant to a Quit Claim Deed dated May 3, 2001, and a federal land Patent signed by President John Tyler in 1843. However, the documents which were attached to plaintiffs' amended complaint reveal that Jeffery S. Bartkowiak held a warranty deed recorded in the Register's of Deeds Office for Milwaukee County, Wisconsin, August 31, 2000; that World Savings Bank initiated a foreclosure proceeding against Bartkowiak on December 4, 2001; and that a Lis Pendens was filed December 4, 2001. Amaya, by her own admission, did not record a Quit Claim Deed to the Upper River Road property until June 19, 2003.

Amaya appeared before this court in another action, *Amaya v. McManus*, Case No 03-C-986 (E.D. Wis.), during which the court explained that she must have counsel to bring suit on behalf of her children. Fed. R. Civ. P. 17(c); see *Navin v. Park Ridge Sch. Dist.*, 270 F.3d 1147, 1149 (7th Cir. 2001) (per curiam). Thus as the inception of this case, Amaya was aware that she can not represent her children and file suit in their names. The choice to appear pro se is not a "true choice" for minors who cannot determine their own legal actions; consequently, minors are entitled to trained legal assistance so that their rights may be fully protected. See *Cheung v. Youth Orchestra Found of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990)*. The court granted Amaya leave to retain counsel in this action on behalf of her children. However, rather than retaining counsel, Amaya filed notice of appeal. Because Amaya may not act as her minor children's attorney, the claims brought by her children will be dismissed without prejudice.

Next, the court inquired about the factual basis for Amaya's motion for leave to amend filed January 27, 2004. Mindful that leave to amend shall be granted freely when justice

so requires, the court considered Amaya's arguments in support of her request to amend the complaint, but heard nothing that would warrant amendment of the complaint at this stage. Fed. R. Civ. P. 15(a). Civil L.R. 15.1 (E.D. Wis.) requires that a party attach the proposed amended pleading to the motion to amend, but no such pleading was filed. The motion itself states nothing more than a desire to include the "most recent overt events arising out of the transaction and/or occurrence set forth or attempted to set forth in original complaint." During the hearing on June 3, Amaya could not identify any factual basis for the amendment or claims related to those presented in the first amended complaint filed November 25, 2003. After giving Amaya additional opportunities to argue in favor of the proposed amendment, the court denied her request as unwarranted.

Turning to the motion to dismiss filed by Milwaukee County Circuit Judge Michael Guolee, Amaya stated that Judge Guolee "was wrong" in issuing a writ of assistance. The court gave Amaya numerous opportunities to state more than her belief that Judge Guolee should have conducted a more thorough inquiry before issuing the writ. She admitted that she did "not know what he did" but speculates that there must have been a conspiracy.

Vague and conclusory allegations that a conspiracy existed are not sufficient to state a claim; a complaint must contain factual allegations suggesting that defendants reached a meeting of the minds. *Ryan v. Mary Immaculate Queen Ctr., 188 F.3d 857, 860 (7th Cir. 1999).* Furthermore, Judge Guolee is absolutely immune from suit for his judicial act of issuing the writ of assistance, See *Brokaw v. Mercer County, 235 F.3d 1000, 1015 (7th Cir. 2000)*, and any damages claim against him arising from his official actions is a suit against the State of Wisconsin and is barred by the Eleventh Amendment. See *Meadows v. State of Indiana, 854 F.2d 1068, 1069 (1968).* As a result, the court concluded during the June 3, 2004, hearing that Judge Guolee's motion to dismiss should be granted.

The next group of defendants, Jay Pitner, Gray & End, World Savings Bank, Unknown Gray & End Employees, and Unknown World Savings Bank (collectively World Savings Bank defendants), filed a motion to dismiss pursuant to Rules

12(b)(4) and (6), and provided Amaya with notice respecting the applicability of Federal Rule of Civil Procedure 56(e) and (f) and Civil Local Rule 56.1 (E.D. Wis.).

If matters outside the pleadings are presented, a district court may exclude those documents and continue under Rule 12 or convert the motion into a summary judgement motion and proceed under 56. Although Amaya asked that this motion be denied, she never responded to the proposed findings of fact filed by the World Savings Bank defendants, nor otherwise filed an affidavit or evidentiary material in support of her claims. Thus, the proposed findings of facts are undisputed and the court finds as follows:

On August 18, 2000, Jeffery S. Bartkowiak borrowed from World Savings Bank the sums of $471,750.00. (Aff. Avery, Ex. A) World Savings accepted a mortgage and note from Bartkowiak, which was secured by property located 9333 Upper River Road, River Hills, Wisconsin 53217. (Aff. Avery, Ex. B) On December 11, 2001, World Savings Bank, FSB, commenced a foreclosure action as Milwaukee County Circuit Court case No. 01-CV-001706. (Aff. Avery, Ex. D) The complaint identified the defendants as Jeffery S. Bartkowiak and Jane Doe Bartkowiak, residing at 9333 N. Upper River Road, River Hills, WI, 53217. (*Id.)* A Lis Pendens was recorded on the same date, December 11, 2001, by the Milwaukee County Register of Deeds as Document No. LP132629. (Aff.Avery, Ex. F) On May 9, 2002, a judgement of foreclosure was entered on behalf of World Savings Bank, FSB, and the property was sold by the Milwaukee County Sheriff on July 28, 2003. (Aff. avery, Ex. E) Milwaukee County Circuit Court Judge Michael D. Guolee confirmed the Sheriff's sale on September 8, 2003, and granted World Savings Bank, FSB, a Writ of Assistance for the removal of the defendants and/or tenants/occupants. Aff. Avery, Exs. G, I) Amaya's Quit Claim Deed from Bartkowiak was recorded on June 19, 2003.

In responding to the motion to dismiss, or, alternatively, motion for summary judgement, plaintiff maintains that she has stated claims under §§ 1983, 1985(3) and 1986. A claim for conspiracy under 42 U.S.C. § 1985(3) requires: (1) the existence of a conspiracy; (2) for the purpose of depriving any person or

class of persons of the equal protection of the laws or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy, and (4) an injury to person or property or as deprivation of a right or privilege granted to U.S. citizens. *Brokaw,* 235 F. 3d at 1024. In addition, Section 1985(3) requires "some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions." *Griffin v. Breckenridge,* 403 U.S. 88,102, 91 S.Ct. 1790, 29 L. Ed. 2d 338 (1971); *Brokaw*, 235 F.3d at 1024.

Claims under Section 1986 derive from claims under Section 1985. Section 1986 imparts liability on those who know of a Section 1985 conspiracy and do nothing to prevent it, despite their power to do so. *Bell v. City of Milwaukee,* 746 F.2d 1205, 1233 (7th Cir. 1984). When a § 1985 claim cannot be sustained, the § 1986 claim fails also. *Rodgers v. Lincoln Towing Service, inc.,* 771 F.2d 194, 203 (7th Cir. 1985).

The hurdle for Amaya is that there are no facts suggesting that the defendants had a meeting of the minds, or that she was subject to treatment that varied from the treatment of any other individual who may be is deemed a subsequent purchaser of property. It is undisputed that at the initiation of the foreclosure action against Jeffrey Bartkowiak, a title search revealed that Bartkowiak was the sole owner of the property. Moreoever, it is undisputed that Amaya filed her Quit Claim Deed 1 ½ years after commencement of the foreclosure action, and a month after the judgement of foreclosure was entered. Hence, Amaya recorded her Quit Claim deed with notice of foreclosure action, yet failed to intervene in further state court proceedings concerning the foreclosure.

Amaya's rights are controlled by her failure to record the Quit Claim Deed and sec. 840.10, Wis. Stats., which states that after a lis pendens is filed: every... encumbrancer whose conveyance or encumbrance is not recorded or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the proceedings... as if he [or she] were made a party thereto. The legal effect to parties who are not holders of a recorded interest in property at the time of the filling of a lis pendens is that the parties are bound and concluded by the foreclosure judgment to the same extent and in the same manner

as if they had been joined and served as parties thereto. *J.& S. Corp. v. Mortgage Assoc's, Inc.*, 41 Wis.2d 418, 423, 164 N.W.2d 221, 223-24 (1969).

With respect to her due process claims under § 1983, Amaya has not identified any process she was due beyond what she was afforded. Defendants World Savings Bank, Pitner, Gray & End, initiated the foreclosure action based on Bartkowiak's mortgage and note, as well as a title search. Consequently, Amaya was not entitled to receive notice of foreclosure because she had not recorded her Quit Claim deed. Moreover, nothing suggests that defendants had any knowledge of Amaya prior to the filing of her Quit Claim deed. In addition, World Savings was entitled to the Writ of Assistance issued by Judge Guolee pursuant to Wis. Stat. § 846.17 because it was the highest bidder at the Sheriff's Sale held on July 28, 2003. The sale was confirmed on September 8, 2003 by the Milwaukee County Circuit Court in its Order Confirming Sale. Upon confirmation of the sale, title passed and vested in World Savings Bank which thereby secured the right of possession. It is noted that the judgment of foreclosure, which was entered before Amaya filed the Quit Claim Deed, states:

> That after the sheriff's sale, the sheriff shall make due report thereof to the court, and the purchaser shall be let into possession of the premises upon confirmation of the sheriff's sale and all parties to this action or other persons securing possession after the date the lis pendens was recorded shall deliver possession to said purchaser.

(Aff. Avery, Ex. E) Regardless, it is clear that the World Savings Bank defendants satisfied Judge Guolee that they complied with Wisconsin law in foreclosing Bartkowiak's mortgage and in requesting a writ of assistance to obtain physical possession of the Upper River Road property. Moreover, the World Savings Bank defendants have shown the steps they took with respect to the foreclosure action and Amaya has presented no proof that they engaged in any fraud, conspiracy, material misrepresentation or violations of any civil right laws. Hence, the motion to dismiss or, in the alternative, motion for summary judgement filed by the World Savings Bank defendants will be granted. *See Hishon v. King & Spaudling*, 467 U.S. 69, 73, 104

S. Ct. 2229 81 L. Ed. 2d 59 (1984)(citing *Conley Gibson,* 355 US 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957)).

The final group of defendants, Milwaukee County, Susan Witcliffe, the Milwaukee Sheriff's Department and unknown detectives of Sheriff's department, argue that they acted in reliance upon a facially valid court order. In *Henry v. Farmer City State Bank,* 808 F. 2d 1228, 1238-39 (7th Cir. 1986), the Seventh Circuit extended absolute quasi-judicial immunity to a sheriff who allegedly entered plaintiff's home and seized personal property because the sheriff was "at all times acting pursuant to an official court order to enforce a validly entered judgement." *Id.,* 808 F.2d at 1283-39. In so ruling, the court found that the sheriff's enforcement of the order was intimately related to the judicial process. *Id.,* 808 F.2d at 1239. ("[i]t is difficult to think of a task more intimately related to a judicial proceeding than that of enforcing a money judgment entered by a court"). Here, Judge Guolee entered the writ of assistance, which was executed by the Milwaukee County Sheriff's Department. Although Amaya acknowledges Judge Guolee's orders, she asserts that she told the deputy sheriffs who evicted her that she was the owner of the property. However, the untenable result of her position would require "sheriffs and other court officers who enforce properly entered judgments pursuant to facially valid court orders to act as appellate courts, reviewing the validity of both the enforcement orders and the underlying judgments before proceeding to collect on them." See *Richman v. Sheahan,* 270 F.3d 430, 436-38 (7th Cir. 2001).

Additionally, in her motions to strike defendants' motion to dismiss, Amaya asserts that she "stated that plaintiffs property was taken without due process and they were illegally evicted." To the extent that her complaint rests on what she maintains was an illegal eviction, Amaya's injuries are inextricably intertwined with the judgment of foreclosure, the writ of assistance, and the ensuing notice of eviction. Determining the validity of these state court actions would require the court to engage in appellate review. However, the *Rooker Feldman* doctrine precludes federal courts from engaging in appellate review over state court decisions. *Long v. Shorebank Dev. Corp.,* 182 F.3d 548, 553 (7th

Cir. 1999). "A plaintiff may not circumvent the effect of the *Rooker-Feldman* doctrine simply by casing [her] complaint in the form of a civil rights action." *Remer v. Burlington Area Sch. Dist.*, 205 F.3d 990, 997 (7th Cir. 2000). With that mind, and taking into consideration Amaya's written and oral arguments, it is clear that Amaya's real injury derives from the writ of assistance and ultimate eviction from the property.

Finally, Amaya has sued Milwaukee County, which can only be liable for depriving an individual of his or her constitutional rights if the deprivation was the result of official policy, custom or practice. *Wilson v. Giesen*, 956 F.2d 738, 744 (7th Cir. 1992) (citing Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)). The court can discern no policy or custom that might have caused a constitutional violation.

Now, therefore,

IT IS ORDERED that the claims brought by plaintiff Graciela Amaya's minor children are dismissed without prejudice.

IT IS FURTHER ORDERED that defendant Michael D. Guolee's motion to dismiss is granted. (Doc. #6)

IT IS FURTHER ORDERED that defendant Jay J. Pitner, Gray & End, LLC, World Savings Bank, Unknown Gray & End employees, and unknown World Savings Bank Employees' Rule 12(b)(4) and (6) motion for an order to dismiss is granted. (Doc. #14)

IT IS FURTHER ORDERED that plaintiff's motion to strike the defendants' motions for dismissal is denied. (Doc. #23)

IT IS FURTHER ORDERED plaintiff's motion for leave to amend is denied. (Doc. #26)

IT IS FURTHER ORDERED that defendants Milwaukee County, Susan Witcliffe, the Milwaukee Sheriff's Department and unknown detectives of Sheriff's Department's motion to dismiss is granted. (Doc. #33)

IT IS FURTHER ORDERED that plaintiff's 2nd Motion to Strike Defendant B's Motion to Dismiss is denied. (Doc. #35)

IT IS FURTHER ORDERED that plaintiff's emergency motion for relief pending outcome of trial is denied as moot.

inasmuch as the court rescheduled the hearing set for March 17, 2004, to June 2, 2004, when Amaya was available. (Doc. #39)

Dated at Milwaukee, Wisconsin, this 27th day of July, 2004.

BY THE COURT

C.N. CLEVERT, JR.
U.S. District Judge

This 28th day of July, 2004, pursuant to Rule 77(d) Federal Rules of Civil Procedure, copies of this document were mailed by M. Jones to the following parties:

Graciela Amaya
5552 S. O'Brien Ave. – Apt. 1
Cudahy, WI 53110

Michael M. Riley
Gray & End
600 N. Broadway – 3rd Fl.
Milwaukee, WI 53202-5009

David C. Rice
WI Dept. of Justice
Office of the Attorney General
17 W. Main St.
P.O. Box 7857
Madison, WI 53707-7857

Emile H. Banks, Jr.
Emile Banks & Associates LLC
2600 N. Mayfair Rd. – Ste. 1120
Milwaukee, WI 53226

Memorandum of Law pursuant to Civil Rights and The Federal Land Patent

..... the Land Patent is a contract between the patentee and U.S.. U.S. v. Beggerly, 97 US 731 (1998). The land grant / patent is a contract between the patentee and the U.S. ARTICLE 1 Sec. 10, ***States shall pass no law impairing the obligation of contracts*** *FLETCHER v. PECK, 10 U.S. 87, 3 L.Ed. 162. A patent certificate, or patent issued, or confirmation made to an original patent issued, or confirmation made to an original grantee or his legal representative, embraces representatives of the grantee or assignee by contract as well as by law. HOGAN v. PAGE, 17 L.Ed. 854. "Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "person" right, whether the "property" in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and personal property right. Neither could have meaning without the other. The rights in property are basic civil rights has long been recognized. Congress recognized these rights in 1871 when it enacted the predecessor of 42 U.S.C. 1983 and 1343(3). We do no more than reaffirm the judgment of Congress today. Lynch v. Household Finance Corp., 405 U.S. 538 (1972) 42 U.S.C. 1983 provides that every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, or the District of Columbia, subjects, or causes to be subjected, any citizen o f the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, suit in equity, or other proceedings for redress. 42 U.S.C. 1983 "The covenants run with the land, but only those that are in the patent proceedings." Covenants must have been presented in the original patent proceedings or are forever barred." SUMMA v. CALIFORNIA, 466 U.S. 198 (1984) "Owner is free to do with his property what he wills, absent criminal intent, constitutional limitations, or liability for*

tortuous activities in connections therewith" 214N. SUPER 275 (Feb 14, 1990) The claimant of the land patent holds superior interest and title to the property so patented. According to 63C Am Jur 2d pg. 422. "Nothing passes by intendment or implication, and the grant will cover only that which is conveyed in clear language." 63C Am Jur 2d pg. 423. In federal Courts, the patent ***is held to be the foundation of title law law****. FENN v. HOLME, 21 HOWARD 481. The U.S.* ***Land patent prevails over state constitution*** *. Property rights are paramount. Not only does the constitution protect property rights, but the laws of the Federal Government does also. STELLA HUGHES v. STATE OF WASHINGTON, 389 U.S. 290 (1967). "This patent like all patents cannot be collaterally attacked, patents cannot be changed from the original" U.S. v. CORONADO BEACH Co., 255 U.S. 427 (1921). "COLOR OF LAW STATUTES" have no force and effect on the land patent. The state of Wisconsin, the County of Milwaukee do not have the subject matter jurisdiction on the lands transferred under Federal Land Patents. Article 1 Sec 10, States shall pass 'NO' law impairing the obligation of contracts. Any claims by a state to impose interest,* ***control and jurisdiction over patented lands must be provided within the patent or is forever barred.*** *SUMMA v. CALIFORNIA, 466 U.S. 198 (1984). Terms of the patent are complete. So even changes in the land itself do not effect the patent. KLAIS v. DANOWSKI, 373 MICH. 262, 29 N.W. 2d 414. KLAIS v. DANOWSKI, 373 MICH. 281, 129 N.W. 2d 423. The land patent is a contract between the patentee and U.S. "Article 1 Sec. 10, States shall pass no law impairing the obligation of contracts" U.S. v. BEGGERLY, 97 U.S. 731 (1998). A patent is not subject to collateral attack. WEST v. STATNDARD OIL CO., 278 U.S. 200 , 73 L.Ed. 265, 49 S.Ct. 138. A covenant or easement added after patent proceeding would be a collateral attack on the patent. U.S. v. CORONADO BEACH CO., U.S. 427 (1921). The power of Congress to dispose of its land cannot be interfered with, or its exercise embarrassed by sate legislation, nor can such legislation deprive the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of title after the initiation of the proceedings for the acquisition. State statutes that give lesser*

authoritative ownership of title than a patent cannot be brought into federal court. LANGDON v. SHERWOOD, 124 U.S. 74 80; GIBSON v. CHATEAU, 80 U.S. 92. The ***"Warranty Deed" is merely "Color of Title"****. HOWTH v. FARRAR, 94 F. 2D 654. Color of title means: "That is a semblance or appearance of title, but not title in fact or in law" Black's Law Dictionary, 6th Ed.* ***A patent for land is the highest evidence of Title, and is conclusive evidence against the Government and all claiming junior patents or titles****. U.S. v. STONE, 167 U.S. 178. In Federal Courts, the patent is held to be the foundation of title at law. The plaintiff in ejectment must in all cases prove the legal title to the premises in himself title will be sufficient for recovery. The practice of allowing ejectments to be maintained in state courts upon equitable titles cannot effect the jurisdiction of the courts of the United States. FENN v. HOLME, 21 HOWARD 481. Congress has the sole power to declare the dignity and effect of titles emanating from the Unites States and the whole legislation of Government in reference to the public lands declare the patent to be superior and conclusive evidence legal title. Until it issues, the fee is in the Government, which by patent passes to the grantee, and he is entitled to enforce the possession in ejectment .* ***All who claim under patent are entitled to the same rights as the patentee****. BAGNELL v. BRODERICK, 13 PETER 436. A patent certificate, or patent issued, is confirmation made to an original grantee or his legal representative, embraces representatives of the grantee or assignee by contract as well as by law. HOGAN v. PAGE, 17 L.Ed. 854. Since road was not provided for in the original land grant, even though undisputed historical evidence for such was presented, the land owner won the quiet title suit on appeal. HOAGLAND TRUST v EMMET & CHARLEVOIX COUNTY ROAD COMMISIONS, No. 204409 Charlevoix Circuit Court LC No(s). 96-077818 C11 (Michigan court of appeals reversal order eff. Jan. 2000) Since road WAS PROVIDED for in the land patent. Bernal won the right of access to his property. BERNAL v. JOEKS ET AL, 997 p.2d 1192; 2000 Ariz. Appl LEXIS 423; 317 Ariz. Adv., Rep. 25 (Arizona Ct. of Appeals 3/16/2000)*

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

July 8, 2005

Before

Hon. William J. Bauer, Circuit Judge

Hon. Richard A. Posner, Circuit Judge

Hon. Frank H. Easterbrook, Circuit Judge

Nos. 04-2510 and 04-2603

Graciela Amaya,	Appeal from the U.S. Dist. Ct. for the Eastern Dist. of WI
Plaintiff – Appellant,	
v.	No. 03 C 1277
Jay J. Pitner, Gray & End LLC, World Savings Bank, et al.	Charles N. Clevert, Jr., Judge.
Defendants -- Appellees.	

ORDER

On June 20, 2005, plaintiff-appellant filed a petition for rehearing (determination) en banc in connection with the above referenced case. No judge in active service has requested a vote on the petition for rehearing en banc and all of the judges on the original panel have voted to deny rehearing. It is, therefore, ORDERED that the petition for rehearing en banc is DENIED.

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 30, 2005
Decided April 4, 2005
Before

Hon. William J. Bauer, Circuit Judge

Hon. Richard A. Posner, Circuit Judge

Hon. Frank H. Easterbrook, Circuit Judge

Nos. 04-2510 and 04-2603

Graciela Amaya,
Plaintiff – Appellant,

v.

Jay J. Pitner, et al.,
Defendants -- Appellees.

Appeal from the U.S. Dist. Ct. for the Eastern Dist. of WI

No. 03 C 1277

Charles N. Clevert, Jr., Judge

ORDER

Graciela Amaya filed this pro se lawsuit on behalf of herself and her children alleging that Milwaukee sheriffs executing a state court writ wrongfully evicted her from property she says she owns. She does not dispute that World Savings Bank won a state court foreclosure judgment on the property in 2002, when it was owned by Jefferey Bartkowiak. Nor does she dispute that she did not record her interest in the property – a quitclaim title from Bartkowiak – until over a year later. Nonetheless, she believes that she owns the property and contends that the sheriff therefore violated her federal constitutional rights as well as state law in selling to another party and evicting her. The district court dismissed Amaya's

children's claims without prejudice because she declined to obtain counsel for them. Turning to Amaya's claims, the court found a host of fatal defects, among them that the Rooker-Feldman doctrine barred subject matter jurisdiction. See Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); D.C. Ct. of Appeals v. Feldman, 460 U.S. 462 (1983). On appeal Amaya argues that Rooker-Feldman does not apply because she was not a party to the foreclosure proceedings.

Rooker and Feldman hold that federal jurisdiction to review state court decisions in civil litigation – and claims that are "inextricably intertwined" with such decisions – is limited to the Supreme Court's certiorari power under 28 U.S.C. § 1254. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 2005 WL 711586, at *4-5, No. 03-1696 (U.S. March 30, 2005). Lower federal courts lack jurisdiction if the alleged injury resulted from the state court judgment itself. Fredericsen v. City of Lockport, 384 F.3d 437, 438 (7th Cir. 2004).

Amaya does not claim title independent of Bartkowiak, only through him. But the state court foreclosure judgment vested Bartkowiak's title in the bank. Thus the premise of Amaya's suit to recover the property is necessarily that the foreclosure judgment was erroneously entered. The district court could not give her the relief she seeks without in effect reviewing and disregarding the state court's judgment. See Newman v. State of Indiana, 129 F.3d 937, 942 (7th Cir. 1997).

Moreover, because the bank filed a lis pendens before Amaya recorded her interest in the property, she is deemed a subsequent purchaser and the state court's foreclosure judgment transferring title to the bank binds her as if she were a party to those proceedings. See Wis. Stat. § 840.10; J. & S. Corp. v. Mortgage Assoc's. Inc., 164 N.W.2d 221, 223-24 (Wis. 1969). All of Amaya's alleged injuries stem from her eviction, which directly resulted from that judgment. Thus, she cannot prevail without upsetting the state court's judgment, a step that would exceed the federal court's jurisdiction. See Fredericksen, 384 F.3d at 438.

Amaya also continues to assert that she is entitled to advocate on behalf of her children. Though as guardian of her minor children she may sue on their behalf, Fed.R.Civ.P.17(c),

she may not do so without counsel, see Navin v. Park Ridge Sch. Dist, 270 F.3d 1147, 1149 (7th Cir. 2001). Their claims were properly dismissed.

AFFIRMED.

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

(1)

05-1015

Supreme Court, U.S.
FILED
MAY 12 2006
OFFICE OF THE CLERK

No.: 04 – 2510 & 04 – 2603

In The

Supreme Court of the United States

GRACIELA AMAYA, by and on behalf of herself, and, JAIME L. AMAYA, CARLOS J.AMAYA, TOMAS V. AMAYA, RYAN A. HANLEY, minors

Petitioners – Appellants – Plaintiffs

v.

JAY J. PITNER, WORLD SAVINGS BANK, MILWAUKEE COUNTY, SUSAN WITCLIFFE, MICHAEL GUOLEE, in official and personal capacities

Respondents – Appellees – Defendants

On Writ of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

PETITION FOR REHEARING

Graciela Amaya
5790 S. Packard Ave., #1
Milwaukee, WI 53110
(414)243-8177
Pro Se

QUESTIONS PRESENTED FOR REVIEW

1. Can this high court overrule its prior decisions or precedence without granting writ of certiorari?

2. Does this high court or any court have the jurisdiction to deny petitioner her guaranteed constitutional and unalienable rights?

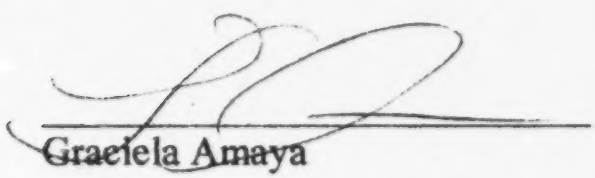
3. Article 6 Clause 3 of the US Constitution of 1787 says, "All …judicial Officers,…of the United States, shall be bound by Oath or Affirmation, to support this Constitution.", Petitioner requests declaration of what jurisdiction of government this Court is a legal entity of, and who and what its oath is to?

CERTIFICATE

I, Graciela Amaya , certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct: that this petition for rehearing of writ of certiorari is restricted to the grounds specified in Rule 44(2) and that it is presented in good faith and not for delay.

Executed on: 05-02-2006

Sincerely,



Graciela Amaya

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Schwarts v. O'Hara TP School District, 100 A 2d. 621, 625, 375, Pa. 440

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Summa v. California, 466 U.S. 198 (1984)

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U.S. v. Stone, 167 U.S. 178.

OTHER AUTHORITIES & STATUTES:

4 U.S.C. Sections 105 through 113

26 U.S.C. Sections 3306 and 5891

28 U.S.C. Sections 1746(1) and 1746(2)

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F.R.A.P. 31(d)

JURISDICTIONAL STATEMENT

This court has jurisdiction under 28 U.S.C. § 1257 and / or in the alternative § 1251 and / or under the original U.S. Constitution of 1787.

STATEMENT OF THE CASE

Petitioner Amaya filed the original action in the Eastern Dist. Ct. of Southeastern WI around Nov. 19, 2003 and the amended complaint on Nov. 25, 2003. The case was ordered dismissed by the Dist. Ct. at the hearing held on June 6, 2004. The 7th Cir. Ct. affirmed the Dist. Ct's. decision on April 4th, 2005. Petitioner Amaya filed a petition for rehearing en banc which was denied on July 8, 2005 by the 7th Cir. Cts. original panel.

STATEMENT OF FACTS

1. In October of 2005, petitioner sent her petitions for writ of certiorari to this high court and to the respondents attorneys in this case.

2. In February of 2006, clerk sent Amaya a letter detailing case was docketed and included a waiver form. Clerk detailed that a notice that case was docketed and the waiver form were to be sent to respondents.

3. Petitioner Amaya did not send out the waiver form to respondents. Petitioner is not an attorney and believes that if petitioner sends a form to respondents to waive their right to respond it may unknowingly waive petitioners right to have her case granted certiorari and / or heard.

4. Either way respondents should be ordered to respond. If respondents waive their right to respond, this court should automatically grant certiorari and rule / order in petitioners favor. If respondents respond to petition and argue to affirm 7th Circuit Court of Appeals ruling then certiorari should be granted to either change this high courts prior decisions or reverse 7th Circuit Court of Appeals and uphold this courts prior decisions.

5. This is not the first time respondents have not responded and filed its petitions on time. In the Seventh Circuit Court of Appeals parties were ordered to respond by certain dates.(EXHIBIT 1) Petitioner filed her brief on time. Respondents did not file on time and were never ordered by the Seventh Circuit to show cause within 14 days why the case should not be treated as ready for oral argument or submission and the Appellees denied oral argument under F.R.A.P. 31(d).

6. Instead the Seventh Circuit Court of Appeals automatically granted an extension of time (EXHIBIT 2) despite any motions / requests by Appellees for extension of time and ignoring its own rules under F.R.A.P. 31(d).

7. This court **must grant** certiorari **to uphold its prior decisions** and guarantee petitioner her unalienable rights, her due process and equal protection constitutional rights **or** to **change precedence** of its prior decisions and therefore affirm the 7th Circuit decision.

8. The issues presented in my petition are very serious and this court would only be able to effectively and fairly decide the fate of this country by ordering respondents to respond to petitioners petition for writ of certiorari.

9. Will this high court of the United States of America follow its own rules and precedence on its previous decisions or will it follow the U.S. District Court of Eastern District of Wisconsin and the Seventh Circuit Court of Appeals actions ignoring its own rules and precedence from decisions of this high court and to put it bluntly ignore petitioners unalienable and constitutionally guaranteed rights?

10. This high court must grant certiorari to answer if this court the law, the constitution and/or procedures mean anything in this country.

11. With all due respect, certiorari must be granted. No citizen of this country should have to ask permission from this court, or any court, to return, restore or guarantee constitutional and unalienable rights. They are already guaranteed by the original constitution of 1787. The supreme law of this country.

12. The United States District Court for Eastern Wisconsin and the Seventh Circuit Court of Appeals for some reason ruled in conflict of prior decisions of this court. The United States Supreme Court must respond by ordering respondent to respond and granting certiorari. This high court is the only court that can overrule itself and change precedence by this court. This is basic knowledge that even a layman, like myself, can understand.

11. For all these reasons this petition for rehearing of the writ of certiorari and the original writ of certiorari should be granted and lower courts decisions reversed.

ARGUMENT & MEMORANDUM OF LAW IN SUPPORT OF ARGUMENT:

I. The United States Supreme Court is the only court that can overrule its own decisions and are bound by oath to adhere to the constitution of 1787.

1. Lower courts cannot overrule the United States Supreme Court, on its prior decisions and cannot ignore precedence / decisions from this high court. Yet petitioners arguments based on this high court were overruled in Amayas case. It is well established law that a Court of Appeals or any lower court cannot overrule the United States Supreme Court. *...well settled that a Court of Appeals cannot over-rule the United States Supreme Court.* Kitowski v. United States, *931 F.2d 1526, 1529 (11th Cir. 1991), affirmed.*

2. It is well established law that the constitution is the supreme law of the land and all judicial officers of the United States, shall be bound by oath or affirmation. *"All ...judicial Officers, ...of the United States, shall be bound by Oath or Affirmation, to support this Constitution."* Article 6 Clause 3 of the US Constitution of 1787

3. This high court and all courts are obligated to guard and enforce every right secured by the original constitution of 1787. *The Federal Constitution is the "supreme law of the land," and the obligation to guard and*

enforce every right secured by that constitution rests on the state courts equally with the federal courts. Smith v. O'Grady, 61 S.Ct. 572, 312 U.S. 329, 85 L.Ed. 859(1941) ...the courts, posses not power not derived from the Constitution. Ex parte Quirin, 63 S.Ct. 2, 10 (1942). [T]he Constitution [is] the supreme law established by the people. Muskrat v. United States, 31 S.Ct. 250, 254 (1911).

9. Pleadings must be liberally construed in petitioner Amaya's favor if any technicalities have been missed. *Must be liberally construed, especially where civil rights claims are involved. Huffman v. Fiola, 850 F.Supp. 833, 836 (N.D. Cal. 1994) cite Hughes v. Rowe, 101 S.Ct. 173, 175-176 (1980). Must be liberally construed. Moore v. McDonald, 30 F.3d 616, 620 (5th Cir. 1994) Haines v. Kerner, 404 US 519.*

10. Respondents and their attorneys are professionals of law and have violated the laws of this country and rules of both this court and the 7th Circ. Crt. of Appeals. ***(d) Failure of Appellee to File Brief.*** *...clerk shall enter an order requiring .. to show cause within 14 days why the case should not be treated as ready for oral argument ...and.. denied oral argument.... F.R.A.P. 31(d)*

II. A court must have jurisdiction in order to create valid judgments

1. At 28 U.S.C. section 1746, Congress authorized written verifications to be executed under penalty of perjury *without* the need for a Notary Public. This statute identifies two different formats for such written verifications: (1) those executed **outside the "United States"** and (2) those executed **inside the "United States".** These two formats correspond to sections 1746(1) and 1746(2), respectively. "Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required .....such matter may, be evidenced, ...by the unsworn declaration, ...or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, **in substantially the following form: (1) If executed without the**

United States: "I declare (or certify, verify, or state) under penalty of perjury **under the laws of the United States of America** that the foregoing is true and correct. Executed on (date). (Signature)". **(2)** If **executed within the United States**, its territories, possessions, or commonwealths: "**I declare** (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

2. *Clearly, the terms "United States" and "United States of America" are both used in this same statute. They are not one and the same. The former " being federal jurisdiction" U.S. v. Bevans, 16 U.S. (3 WHEAT) 336 (1818), reaff. 19 U.S.C.A., section 1401(h); "the federal United States" ...defined in Article 1, Section 8, Clause 17 (1:8:17) and in Article 4, Section 3, Clause 2 (4:3:2) of the Constitution extending to the District of Columbia, and areas, zones, and districts of federal jurisdiction over its "citizens" under the 14th Amendment, wherever they are "resident", even if they inhabit one of the 50 States of the Union ....*

3. The latter refers to the 50 States of the union that are united by, and under, the U.S. Constitution that is the constitutional republic, the united States of America. 28 U.S.C. 1746 is the *only* federal statute in all of Title 28 of the United States Code that utilizes the term "United States of America", as such. It is obvious, then, that verifications made are *outside* the constitutional republic of the 50 States of the Union if and when they are executed *inside* the "United States" i.e. "the federal zone".

4. Likewise, verifications made are *inside* the constitutional republic of the 50 States of the Union. if and when they are executed *outside* the "United States" , i.e. "the federal zone". The format for signatures on Form 1040 is also the one for verifications made *inside* the United States (i.e., federal zone) and *outside* the United States of America.(the constitutional republic of the 50 States of the Union)

5. Further, we find in federal law, Congress defines various places of exclusive federal jurisdiction as "States". These places are not "states of the Union". In Article II(a) of the Uniform Detainers Act, "(a) 'State' shall mean a state of the United States; the United States of America; a territory or

possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico." in 1940, Congress passed the "Buck Act" now found in 4 U.S.C. Sections 105-113. In Section 110(e), this Act authorized any department of the federal government to create a "Federal Area" for imposition of the "Public Salary Tax Act of 1939." This tax is imposed at 4 U.S.C. Section 111. The rest of the taxing law is found in the Internal Revenue Code. The Social Security Board had already created a "Federal Area" overlay. U.S.C. Title 4 is as follows: Sec. 110(d): The term "State" includes any territory or possession of the United States. Sec. 110(e): The term "Federal Area" means any lands or premises held or acquired by or for the use of the United states or any department, establishment, or agency of the United states; and any federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a federal area located within such State.
Under the "Buck Act," 4 U.S.C Secs. 105-113, the federal government has created a "Federal area" within the boundaries of the several states. This area is similar to any territory that the federal government acquires through purchase, conquest or treaty, thereby imposing federal territorial law upon the people in this "Federal area." The Supreme Court has determined, "There has been created a fictional federal "State (of) xxxxxx within a state." *See Howard v. Sinking Fund of Louisville, 344 U.S. 624, 73 S.Ct. 465, 476, 97 L.Ed. 617 (1953); Schwarts v. O'Hara TP School District, 100 A 2d. 621, 625, 375, Pa. 440*

6. Under the Provisions of 4 U.S.C. Sections 105 , the federal "State" is defined "(also known as, "The State of xxxxxxx.") and in Sec. 110(d): The term "State" includes any territory or possession of the United States. Title 26 is no exception to the redefinition of such terms 26 USC § 3306 Definitions - For purposes of this chapter—(j)(1) State - The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
26 USC § 5891 Structured settlement factoring transactions (c) Definitions (6) State -The term "State" includes the Commonwealth of Puerto Rico and any possession of the United States.

7. As noted in the memorandum above, the term "United

States", when used in its meaning as Congress' exclusive jurisdiction over federal property, territories, lands areas defined in Article 1, Section 8, Clause 17 (1:8:17) and in Article 4, Section 3, Clause 2 (4:3:2) of the Constitution, as opposed to the limited jurisdiction of the federal government under the constitution over the 50 states of the union that is the constitutional republic, the united States of America, under Article 1, Section 8 et all , (excepting Clause 17}, when used in this respect as its jurisdiction over federal property, territories, lands areas defined in Article 1, Section 8, Clause 17 (1:8:17) and in Article 4, Section 3, Clause 2 (4:3:2, the "United States" is foreign with respect to the 50 states of the union united by and under the Constitution. that is the constitutional republic, the united States of America. Such that the Supreme Court has ruled *"...we have in this country substantially or practically two national governments;.."* Downes v. Bidwell, *182 U.S. 244. See also* Hooven & Allison Co. vs Evatt, *324 U.S. 652 (1945)*

8. Congress must be considered in two distinct characters. In one character as legislating for the states, in the other, as a local legislature for the district. In the latter character, it is not a constitutional court enforcing the original constitution and our unalienable rights. *Loughborough vs Blake, 15 U.S. (5 Wheat.) 317 – 5 L.Ed. 98 (1820)*

9. The term "*unalienable*", when defining our fundamental rights in our Declaration of Independence, and the rights guaranteed by the Bill of Rights means: *"Rights which can* ***never*** *be abridged because they are so fundamental" - Black's Law Dictionary, 6th Edition, p.1057*

10. Our Constitution and the Bill of Rights only *enumerated* (listed) those rights, they did NOT give us those rights, they are ours at birth. They are NOT *privileges* that can be granted, nor can they be taken away or abridged. The "*unalienable*" Rights of EVERY AMERICAN are guaranteed at birth. However, the courts continue to systematically abridge and incrementally deny my unalienable rights!

11. Chief Justice John Marshall, writing in the year 1828 makes a very clear distinction between judicial courts, authorized by Article III, and legislative (territorial) courts, authorized by Article IV. Marshall even utilizes some of the

exact wording of Article IV to differentiate those courts from Article III "judicial power" courts, as follows: *These territorial courts then, are not Constitutional courts, in which the judicial power conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general rights of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make all needful rules and regulations, respecting the territory belonging to the United States. The jurisdiction with which they are invested, is not a part of that judicial power which is defined in the 3d article of the Constitution....In legislating for them, Congress exercises the combined powers of the general and of the State government. American Insurance Co. v. 356 Bales of Cotton, 1 Pet. 511 (1828), emphasis added. ....the phrase "court of the United States", when used in a federal statute, is generally construed as not referring to "territorial courts." See Balzac v. Porto Rico, 258 U.S. 298 at 312 (1921), 42 S.Ct. 343, 66 L.Ed. 627. In Balzac, the high Court stated: The United States District Court is not a true United States court established under Article III of the Constitution to administer the judicial power of the United States therein conveyed. It is created by virtue of the sovereign congressional faculty, granted under Article IV, Section 3 of that instrument, of making all needful rules and regulations respecting the territory belonging to the United States.*

12. *As opposed to those "Citizen[s] of the United States" as found in the original Constitution who are a "Citizen of one of the United States i.e., a Union State Citizen, Dred Scott v. Sandford, 19 How. 393, 404 (1856)] "..... united by and under the [US] Constitution" Hooven & Allison Co. v. Evatt, 324 U.S. 652 (1945)] the Constitutional republic, united States of America. and who are not under the direct protection and possession of Congress, and subject to its sovereign jurisdiction and to the jurisdiction and laws of the federal United States or federal UNITED STATES, INC., but are under the protection of the Constitutions of the states of the republic whereon they are citizens and of that Constitutional republic of the 50 states, United States of America, under the Congress acting in its*

limited jurisdiction under Article 1, Section 8 et all , (excepting Clause 17) of the constitution over the 50 states of that constitutional republic, the United States of America whose jurisdiction and laws for de jure sovereign born Citizens on the land on one of the several States of the republic: "Citizens of one of the United States" who are "Citizens of the United States" Dred Scott v. Sandford, (U.S. Constitution 1:2:2, 1:3:3 and 2:1:5.), are not the laws of Congress acting in its absolute authority and exclusive power in Article 4, Section 3, Clause 2 (4:3:2) See Brushaber v. Union Pacific Railroad Company, 240 U.S. 1 (1916), and Treasury Directive 2313, as noted in memoranda above, are nonresident aliens with respect to such jurisdiction of Congress and its laws over the federal United States, i.e. the federal zone and its" residents" and [federal] "citizens of the United States".

13. As is discussed in the MEMORANDUM OF JURISDICTION above, and as was determined in *Brushaber v. Union Pacific Railroad Company, 240 U.S. 1 (1916),* wherein the plaintiff identified himself, and acknowledged as a Citizen of New York State and was classified by the Court in its ruling as a "nonresident alien". In the year 1868 or now the 14th amendment created no new status for the "Citizen of one of the United States***", i.e., a Union State Citizen." *Dred Scott v. Sandford,*. State Citizens are Citizens of the United States by virtue of being born sovereign state Citizens on the land on one of the states of the union of several states that is the Constitutional republic, the united States of America , as per Article 2, Section 1, Clause 5 (2:1:5) and, as such, they are fully entitled to the "Privileges and Immunities" mentioned in Article 4, Section 2, Clause 1 (4:2:1), as unalienable rights. There can be no law, statute or treaty that can be in conflict with the intent of the original founding Constitution. For, if this were permitted to occur, the founding Constitution would be a nullity. The original Constitution of 1787 is perpetual, as is the Citizenship that is recognized by it. *See Texas v. White, 7 Wallace 700 (1869).*

14. Unalienable rights and protections of Constitutional law cannot be overruled or abolished by any act of congress. It is a material question here raised in Petitioners petition to challenge and determine the Court's jurisdiction: Whether this

court has sworn its oath to uphold that Constitution created under 1787 or is it to some other jurisdiction of government entitled "United States" or "United States of America", not directly created by that constitution created through the sovereign electors on the land, on the several states of the Constitutional republic, the United States of America which is **not a jurisdiction in and of the** 50 states of the union, that is the constitutional republic, the United States of America.

15. A declaration on the record of the Court to resolve the courts actual jurisdiction and proper setting under its oaths and bonds and certifications of offices and issues in doubt already cited in this petition being necessary, therefore hearing is being sought for this petitions consideration, unless the Court, would determine without hearing to grant this petition to vacate and reverse lower courts orders for causes already shown or others, making hearing and declaration of the Court on the record unnecessary.

WHEREFORE, for all these facts / reasons and memorandum of law in support of petition, petitioner requests:

RELIEF REQUESTED

Petitioner requests mandate for reversal of District Courts and / or 7th Circuit Court of Appeals decision as stated in this petition and for relief requested in amended complaint filed in District Court as well as appropriate and effective action to restore Petitioners to their home / property / land immediately.

Date 5-2-06

Sincerely,

Graciela Amaya, Petitioner/s

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

October 1, 2004

Graciela Amaya,

Plaintiff – Appellant,

Appeal from the U.S. Dist. Ct. for the Eastern Dist. of WI

Nos. 04-2510 and 04-2603

No. 03 C 1277

v.

Jay J. Pitner, Gray & End LLC, World Savings Bank, et al.

Charles N. Clevert, Jr., Judge.

Defendants -- Appellees.

ORDER

On consideration of the "JURISDICTIONAL MEMORANDUM" filed by appellant on June 25, 2004, the "RESPONSE OF APPELLEES, JAY J. PITNER, GRAY & END, LLP, WORLD SAVINGS BANK, UNKNOWN EMPLOYEES OF GRAY & END, AND UNKNOWN EMPLOYEES OF WORLD SAVINGS BANK, TO THE APPELLANTS'S JURISDICTIONAL MEMORANDUM" filed on July 12, 2004, "DEFENDANTS-APPELLEES MILWAUKEE COUNTY, SUSAN WITCLIFFE, THE MILWAUKEE SHERIFF'S DEPARTMENT, AND UNKNOWN DETECTIVES OF THE SHERIFF'S DEPARTMENT'S RESPONSE TO THE PLAINTIFF-APPELLANT'S JURISDICTIONAL MEMORANDUM" filed on July 12, 2004, and the "RESPONSE OF APPELLEE MICHAEL D. GUOLEE TO APPELLANT'S JURISDICTIONAL MEMORANDUM" filed on July 12, 2004,

-over-

IT IS ORDERED that this appeal shall proceed to briefing. The briefing schedule is as follows:

1. The plaintiff-appellant shall file her consolidated brief and required short appendix on or before November 8, 2004.
2. The defendants-appellees shall file their respective consolidated briefs on or before December 8, 2004.
3. The plaintiff-appellant shall file her consolidated reply brief, if any, on or before December 22, 2004.

Counsel for appellees are cautioned to avoid unnecessary Duplication by filing a joint brief or a joint appendix or by adopting parts of a co-appellee's brief. Duplicative briefing will be stricken and may result in disciplinary sanctions against counsel. See United States v. Torres, 170 F.3d 749 (7th Cir. 1999); United States v. Ashman, 964 F.2d 596 (7th Cir. 1992).

Further, the clerk is directed to distribute, along with briefs in this consolidated appeal, copies of the court's order of June 18, 2004, and the jurisdictional memoranda filed by the parties.

NOTE: Counsel should note that the digital copy of the brief required by Circuit Rule 31(e) must contain the entire brief from cover to conclusion. The language in the rule that "[t]he disk contain nothing more than the text of the brief.." means that the disk must not contain other files, not that tabular matter or other sections of the brief not included in the word count should be omitted. The parties are advised that Federal Rule of Appellate Procedure 26(c), which allows for three additional days after service by mail, does not apply when the due dates of briefs are set by order of this court. All briefs are due by the dates ordered.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

January 14, 2005

Graciela Amaya,

Plaintiff – Appellant,

Appeal from the U.S. Dist. Ct. for the Eastern Dist. of WI

Nos. 04-2510 and 04-2603

No. 03 C 1277

v.

Jay J. Pitner, Gray & End LLC, World Savings Bank, et al.

Charles N. Clevert, Jr., Judge.

Defendants -- Appellees.

v.

No. 03 C 1277

Jay J. Pitner, et al.,

Defendants -- Appellees.

Charles N. Clevert, Jr., Judge

IT IS ORDERED that briefing in these appeals will proceed as follows:

1. The briefs of the appellees are due February 14, 2005.
2. The reply brief of the appellant, if any, is due February 28, 2005.

Note: Circuit Rule 31(c) (amended Dec. 1, 2001) requires that counsel tender a digital copy of a brief, from cover to conclusion, at the time the paper copies are tendered for filing. The file must be a text based PDF (portable document format), which contains the entire brief from cover to conclusion. Graphic scanned PDF images do not comply with this rule and will not be accepted by the clerk.

Rule 26(c), Fed. R. App.P., which allows three additional days after service by mail, does not apply when the due dates for briefs are specifically set by order of this court. All briefs are due by the dates ordered.